

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and after considering the arguments made by the parties, the Appeals Board finds that the Workers Compensation Fund should be liable for all of the benefits awarded. The decision by the Administrative Law Judge on this issue should be reversed.

For reasons explained below, the Appeals Board finds claimant's bilateral carpal tunnel syndrome probably and most likely would not have occurred but for preexisting injury to both elbows. The first elbow injury occurred in 1990 when claimant fell and struck his elbow on a concrete floor. Claimant underwent surgery to repair a chip in the left elbow. He was off several months to recuperate from the surgery. When he returned to work he developed problems in his right elbow and subsequently underwent surgery of the right elbow. Both elbow injuries occurred in the course of his employment for respondent. Claimant filed workers compensation claims for both elbow injuries and recovered benefits for permanent injury in both cases.

When claimant returned after the second elbow injury, he initially worked on the burr table. Several months later he returned to his former position, operating a hand router. Claimant testified that while operating the hand router he protected his elbow injuries by applying more pressure with his hands. After several months of operating a hand router, claimant developed symptoms later diagnosed as carpal tunnel syndrome. He eventually underwent bilateral carpal tunnel surgery and has since returned to his position as a hand router operator.

The Kansas Workers Compensation Fund is required to pay all benefits in cases where the employer retained claimant with knowledge of an impairment constituting a handicap and where the injury at issue would not have occurred but for that preexisting impairment. K.S.A. 44-567. Respondent retained claimant with knowledge of a preexisting handicap. As indicated claimant received benefits for permanent impairment to both elbows. Respondent provided some accommodation for the elbow injuries by allowing claimant to work with smaller parts than he previously had when he operated a hand router. Claimant wore an elbow strap at work to help take pressure off the elbow.

The Workers Compensation Fund argues, however, the evidence fails to establish that the carpal tunnel syndrome would not have occurred but for the preexisting injury to the elbows. Two (2) physicians provided testimony relevant to this issue. Dr. Zimmerman, a company physician, testified claimant would not have developed carpal tunnel syndrome but for the preexisting injuries to his elbows. Dr. Blaty initially testified on direct examination that he did not believe there was a relationship between the elbow injuries and the carpal tunnel syndrome. However, on cross examination, when provided information about claimant's altered operation of the router, Dr. Blaty agreed that the previous elbow injuries most likely accelerated the onset of the carpal tunnel syndrome. The Appeals Board views both the opinion of Dr. Blaty and the opinion of Dr. Zimmerman as support for imposing liability on the Kansas Workers Compensation Fund. The opinion of Dr. Blaty does so because, under Kansas law, an injury which intensifies or accelerates a condition is fully compensable. Kauffman v. Co-operative Refinery Assn., 170 Kan. 325, 225 P.2d 129 (1950).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that all benefits awarded pursuant to the agreed upon Award filed with the Division of Workers

Compensation in February 1994 should be paid by the Kansas Workers Compensation Fund.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Snider, Wichita, Kansas
Boyd A. Byers, Wichita, Kansas
Marvin Appling, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director